IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No: 19254 of 1993

Between:

G.Bal Ramudu S/o.G.Narsimha
Office of Station Fire Officer, Nagar Kurnool
Mahabubnagar District.

..... PETITIONER

AND

1 The Divisional Fire Officer, Mahaboobnagar.
2 The Registrar A.P. Administrative Tribunal, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of certiorari calling for the records relating to the passing of the impugned order of the Hon'ble Administrative Tribunal in OA.No.6748/1992 Dt.17/11/1992 and also the order of the first respondent in Proc.Rc.No.6510/A2/89, Dt.04/11/1992 removing the petitioner from service and declare the same as arbitrary and illegal and consequently direct the first respondent to reinstate him into service.

Counsel for the Petitioner: MR.S.SATYAM REDDY

Counsel for the Respondents: GP FOR SERVICES I

The Court made the following:

ORAL ORDER (PER GB,J.)

The Writ Petition is filed assailing the order, dated 17.11.1992 passed by the Andhra Pradesh Administrative Tribunal in O.A.No.6748 of 1992.

2. The petitioner was selected for the post of fireman on 1.12.1991. Thereafter, he was sent for training and after completion of training, he was admitted to duty. However, his services were terminated on 4.11.1992 on the ground that he did not mention the details of his arrest and involvement in a criminal case in the attestation form. The said order came to be challenged by the petitioner in O.A.

3. The Tribunal dismissed the O.A. on the ground that there were no merits in the case. Against the said order, the present Writ Petition has been filed.

4. This Court granted interim suspension of the operation of the proceedings Rc.No.6510/A2/89, dated 4.11.1992 of the Divisional Fire Officer, Mahabubnagar. By virtue of the said interim suspension, it is now stated before this Court that the petitioner was reinstated into service and continued, but this Court vacated the said interim suspension on 15.4.2004. But however, as the matter is listed for final hearing, it is heard on merits.

5. The learned counsel for the petitioner submits that no opportunity was given to the petitioner before issuing the impugned order of termination and that it is in gross violation of principles of natural justice. However, he submits that the criminal Court

acquitted the petitioner of the charge leveled against him and therefore it cannot be taken as a stigma to render him as ineligible for Government service. He further submits that by virtue of the interim orders of this Court he has been working for the last one decade and it will be a very harsh to throw him out of service at this point of time. Thus, he submits that the impugned order is liable to be set aside and he shall be continued in service.

6. Learned Government pleader submits that the petitioner did not disclose the factum of his involvement in the criminal case in the attestation form. It was informed only when the Superintendent of Police questioned him. The learned Government pleader also relies on the decision of the Supreme Court in **DELHI ADMINISTRATION v SUSHIL KUMAR** and submits that the petitioner does not deserve any sympathy from this Court.

7. The issue that arises for consideration is whether the order of removal is sustainable in law. Even though a contention was raised that it is in violation of principles of natural justice, but it is now brought to the notice of this Court that the petitioner was involved in the criminal case as referred to in the order of removal. If his involvement is not established then it will cause great prejudice to him, inasmuch as it is admitted by him that he was involved in a criminal case, but ultimately acquitted by the criminal Court. Merely, involving in a criminal case as held by Supreme Court is sufficient to deny the employment to the petitioner.

8. Learned Government pleader submits that in clause 12 of the State and Subordinate Service Rules, no person shall be eligible for appointment if his character and antecedents are such as to disqualify him from service. Since the petitioner was involved in criminal case and he has suppressed this information, he is not entitled for continuous service. But the moot question that calls for consideration is whether the appointing authority has recorded any finding on this aspect. As we see from the order of termination, it is only based on the report of the Superintendent of Police the order of removal was passed. But what is required to be considered is that the appointing authority has to come to the conclusion that the character and antecedents of the employee are such as to disqualify him from

service. This finding has not been recorded by the appointing authority. In such a situation, we have to hold that there is non-application of mind to the material available on record.

9. Under those circumstances, we are inclined to set aside the order dated 4.11.1992 and direct the first respondent to consider the matter afresh in the wake of the material available and come to the conclusion whether such character and antecedents would disqualify him from holding such post. This exercise shall be done within a period of two months from the date of receipt of a copy of this order. It is also brought to the notice of this Court that the petitioner is continuing in service even though the interim suspension order was vacated on 15.4.2004. Therefore, the petitioner shall continue in service subject to the final order that will be passed by the first respondent as directed.

10. With the direction indicated above, the Writ Petition is disposed of. No costs.

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(G. BIKSHAPATHY, J.)

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(P.S. NARAYANA, J.)

Date: 15.12.2004

ES

To

1. The Divisional Fire Officer, Mahaboobnagar.
2. The Registrar A.P. Administrative Tribunal, Hyderabad.

3. 2 CCs to the G.P. for Home, High Court of A.P., Hyderabad (OUT).

4. 2 CD copies.